

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

MELVIN ELLIS HOLLY,)
)
)
 Plaintiff,)
)
)
vs.) Case No. 10-CV-405-JHP
) (04-CR-00114-SPF and
WARREN GOTCHER, dba Gotcher Law) CIV-08-404-SPF)
Firm, DENNIS DELA, individually, ROY)
ALFORD, individually, and LATIMER)
COUNTY BOARD OF COUNTY)
COMMISSIONERS, STATE OF)
OKLAHOMA,)
)
 Defendants.)

ORDER

The Defendant is hereby notified that this Court has recharacterized Defendant's Complaint filed October 29, 2010, and Supplemental Complaint filed November 11, 2010 as a motion to vacate, set aside or correct sentence pursuant to §2255. See *Castro v. United States*, 124 S.Ct. 786 (2003). This is therefore Defendant's second § 2255 motion.

On October 24, 2008, Defendant filed a Motion to Vacate pursuant to 28 U.S.C. § 2255 in Case No. CIV-08-404-SPF. Defendant alleged ineffective assistance of counsel at the trial and appellate levels. The trial court denied relief on September 17, 2009, and the Tenth Circuit Court of Appeals dismissed the appeal on February 5, 2010. *United States v. Holly*, 364 Fed.App'x 471 (10th Cir. 2010).

The provisions of 28 U.S.C. § 2244(b)(3)(A) require a defendant to file a motion in the Tenth Circuit Court of Appeals for an order authorizing this Court to consider this second and successive application. After review of the records, this Court finds Defendant's Motion is subject to the requirements of 28 U.S.C. § 2244(b). Accordingly, this Court directs the Clerk of the Court to transfer this motion to the Tenth Circuit Court of Appeals in the interests of justice pursuant to 28 U.S.C. § 1631 and *Coleman v. United States*, 106 F.3d 339, 341 (10th Cir. 1997); *Pease v. Klinger*, 115 F.3d 763, 764 (10th Cir. 1997).

IT IS SO ORDERED this 17th day of November, 2010.



James H. Payne
United States District Judge
Eastern District of Oklahoma